

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
DUKE ENERGY CORPORATION,)	
)	
Defendant.)	
)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges:

NATURE OF THE ACTION

1. This is a civil action brought against, DUKE ENERGY CORPORATION ("DUKE" or "the Defendant") pursuant to Sections 113(b) and 167 of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(b)(2) and 7477, for injunctive relief and the assessment of civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions of the Act, 42 U.S.C. §§ 7470-92. Numerous times, Defendant modified, and thereafter operated, its seven electric generating plants in North Carolina, and one electric generating plant in South Carolina without first obtaining appropriate permits authorizing construction of modifications at these units and without installing the best available

control technology to control emissions of nitrogen oxides, sulfur dioxide, and particulate matter, as the Act requires.

2. As a result of Defendant's operation of the power plants following these unlawful modifications and the absence of appropriate controls, massive amounts of sulfur dioxide, nitrogen oxides, and particulate matter have been, and still are being, released into the atmosphere aggravating air pollution locally and far downwind from this plant. Defendant's violations, alone and in combination with similar violations at other coal-fired electric power plants, have been significant contributors to some of the most severe environmental problems facing the nation today. An order of this Court directing this Defendant, forthwith, to install and operate the best available technology to control these pollutants, in conjunction with orders being sought in similar cases involving other coal-fired electric power plants in the Midwest and Southern United States filed by the United States, will produce an immediate, dramatic improvement in the quality of air breathed by millions of Americans. It will reduce illness, protect lakes and streams from further degradation due to the fallout from acid rain, and allow the environment to restore itself following years, and in some cases decades, of illegal emissions.

3. Sulfur dioxide, nitrogen oxides, and particulate matter when emitted into the air can each have adverse environmental and health impacts. Electric utility plants collectively account for about 70 percent of annual sulfur dioxide emissions and 30 percent of nitrogen oxides emissions in the United States. Sulfur dioxide ("SO₂") interacts in the atmosphere to form sulfate aerosols, which may be transported long distances through the air. Most sulfate aerosols are particles that can be inhaled. In the eastern United States, sulfate aerosols make up about 25 percent of the inhalable particles and, according to recent studies, high levels of sulfate aerosols are associated with increased sickness and

mortality from lung disorders, such as asthma and bronchitis. Lowering sulfate aerosol emissions from electric utility plants may significantly reduce the incidence and the severity of asthma and bronchitis and associated hospital admissions and emergency room visits.

4. Nitrogen oxides ("NO_x") are major producers of ground level ozone, which scientists have long recognized as being harmful to human health. NO_x, transformed into ozone, may cause decreases in lung function (especially among children who are active outdoors) and respiratory problems leading to increased hospital admissions and emergency room visits. Ozone may inflame and possibly cause permanent damage to people's lungs. NO_x is also transformed into nitrogen dioxide ("NO₂"), a dangerous pollutant that can cause people to have difficulty breathing by constricting lower respiratory passages; it may weaken a person's immune system, causing increased susceptibility to pulmonary and other forms of infections. While children and asthmatics are the primary sensitive populations, individuals suffering from bronchitis, emphysema, and other chronic pulmonary diseases have a heightened sensitivity to NO₂ exposure. NO_x also reacts with other pollutants and sunlight to form photochemical smog, which in turn contributes to haze and reduces visibility.

5. SO₂ and NO_x interact in the atmosphere with water and oxygen to form nitric and sulfuric acids, commonly known as acid rain. Acid rain, which also comes in the form of snow or sleet, "acidifies" lakes and streams, making them uninhabitable for aquatic life, and it contributes to damage of trees at high elevations. Acid rain accelerates the decay of building materials and paints, including irreplaceable buildings, statues, and sculptures that are part of our nation's cultural heritage. SO₂ and NO_x gases and their particulate matter derivatives, sulfates and nitrates, contribute to visibility degradation and impact public health. In this civil action, and in other civil actions already filed, the

United States intends to reduce dramatically the amount of SO₂ and NO_x that certain electric utility plants have been illegally releasing into the atmosphere. If the injunctive relief requested by the United States is granted in this case, and in other cases filed in other districts, many acidified lakes and streams will improve so that they may once again support fish and other forms of aquatic life. Visibility will improve, allowing for increased enjoyment of scenic vistas throughout the eastern half of our country. Stress to our forests from Maine to Georgia will be reduced. Deterioration of our historic buildings and monuments will be slowed. In addition, reductions in SO₂ and NO_x will reduce sulfates, nitrates, and ground level ozone, leading to improvements in public health.

6. Particulate matter is the term for solid or liquid particles found in the air. Smaller particulate matter of a diameter of 10 micrometers or less is referred to as PM 10. Power plants are a major source of particulate matter ("PM"). Breathing PM at concentrations in excess of existing ambient air standards may increase the chances of premature death, damage to lung tissue, cancer, or respiratory disease. The elderly, children, and people with chronic lung disease, influenza, or asthma, tend to be especially sensitive to the effects of PM. PM can also make the effects of acid rain worse, reducing visibility and damaging man-made materials. Reductions in PM illegally released into the atmosphere by the Defendant and others will significantly reduce the serious health and environmental effects caused by PM in our atmosphere.

JURISDICTION AND VENUE

7. This Court has jurisdiction of the subject matter of this action pursuant to Sections 113(b) and 167 of the Act, 42 U.S.C. §§ 7413(b) and 7477, and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

8. Venue is proper in this District pursuant to Sections 113(b) of the Act, 42 U.S.C. §§ 7413(b), and 28 U.S.C. §§ 1391(b), (c) and 1395(a), because violations occurred and are occurring in this District, and several of the facilities at issue are operated by Defendant in this District.

NOTICES

9. The United States is providing notice of the commencement of this action to the State of North Carolina and the State of South Carolina as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

10. The 30-day period established in 42 U.S.C. § 7413, between issuance of the Notices of Violation and commencement of a civil action, has elapsed.

THE DEFENDANT

11. Defendant owns and is an operator of nuclear, hydroelectric, and fossil fuel fired electrical generating stations in North Carolina and South Carolina.

12. Defendant is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

STATUTORY BACKGROUND

13. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

The National Ambient Air Quality Standards

14. Section 109 of the Act, 42 U.S.C. § 7409, requires the Administrator of EPA to promulgate regulations establishing primary and secondary national ambient air quality standards ("NAAQS" or "ambient air quality standards") for those air pollutants ("criteria pollutants") for which air quality criteria have been issued pursuant to section 108, 42 U.S.C. § 7408. The primary NAAQS are to be adequate to protect the public health, and the secondary NAAQS are to be adequate to protect the public welfare, from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air.

15. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an "attainment" area. An area that does not meet the NAAQS is a "nonattainment" area. An area that cannot be classified due to insufficient data is "unclassifiable."

16. At times relevant to this complaint, Defendant's electrical generating plants were located in an area that had been classified as attainment or unclassifiable for one or more of the following pollutants: NO_x, SO₂, PM 10 and PM.

The Prevention of Significant Deterioration Requirements

17. Part C of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration ("PSD") of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with

the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. These provisions are referred to herein as the "PSD program."

18. Section 165(a) of the Act, 42 U.S.C. § 7475(a), among other things, prohibits the construction and operation of a "major emitting facility" in an area designated as attainment or unclassifiable unless a permit has been issued that comports with the requirements of Section 165, including the requirement that the facility install the best available control technology for each pollutant subject to regulation under the Act that is emitted from the facility. Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates fossil-fuel fired steam electric plants of more than two hundred and fifty million British thermal units per hour heat input and that emit or have the potential to emit one hundred tons per year or more of any pollutant to be "major emitting facilities."

19. Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines "construction" as including "modification" (as defined in Section 111(a) of the Act). "Modification" is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted."

ENFORCEMENT PROVISIONS

20. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that "Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has

violated, or is in violation of, any other requirement or prohibition of this subchapter . . . the Administrator may . . . bring a civil action in accordance with subsection (b) of this section"

21. Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day of violation for violations occurring on or before January 30, 1997 and \$27,500 per day for each such violation occurring after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, against any person whenever such person has violated, or is in violation of, requirements of the Act other than those specified in Section 113(b)(1), 42 U.S.C. § 7413(b)(1), including violations of Section 165(a), 42 U.S.C. § 7475(a) and Section 111, 42 U.S.C. § 7411. 22. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements in Part C of the Act.

23. At all times pertinent to this civil action, Defendant was and is the owner and operator of:

- A) the W. S. Lee Plant, located in Anderson County, South Carolina. The Lee Plant operates three coal-fired generating units.
- B) the Belews Creek Plant, located in Stokes County, North Carolina. The Belews Creek Plant operates two coal-fired generating units.
- C) the Buck Plant, located in Rowan County, North Carolina. The Buck Plant operates four coal-fired generating units.

- D) the Cliffside Plant, located in Cleveland County, North Carolina. The Cliffside Plant operates five coal-fired generating units.
- E) the Dan River Plant, located in Rockingham County, North Carolina. The Dan River Plant operates three coal-fired generating units.
- F) the CG Allen Plant, located in Gaston County, North Carolina. The CG Allen Plant operates five coal-fired generating units.
- G) the Marshall Plant, located in Catawba County, North Carolina. The Marshall Plant operates four coal-fired generating units.
- H) the Riverbend Plant is located in Gaston County, North Carolina. The Riverbend Plant operates four coal-fired generating units.

24. At all times pertinent to this civil action, each of the Plants listed in Paragraph 23 was a "major emitting facility" and a "major stationary source," within the meaning of the Act for NO_x, SO₂, and PM.

STATE REGULATORY PROVISIONS

North Carolina

25. Pursuant to Part C of the Clean Air Act, the SIP of North Carolina requires that no construction or operation of a major modification to a major stationary source occur in an area designated as attainment without first obtaining a permit under 40 C.F.R. § 52.21(i), and North Carolina Administrative Code at Title 15A, Chapter 2, Subchapter 2D, Section .0530 (15A NCAC 2D.0530), which was effective on June 1, 1981, and approved by EPA as part of the federally-

enforceable North Carolina SIP on February 23, 1982, at 47 Fed. Reg. 7836, and amended on June 18, 1990, at 55 Fed. Reg. 23735, and on February 1, 1996 (61 Fed. Reg. 3584).

26. Pursuant to Part D of the Act, the SIP of North Carolina requires that no construction or operation of a major modification of a major stationary source occur in an area designated as nonattainment without first obtaining a permit under North Carolina Administrative Code at Title 15A, Chapter 2, Subchapter 2D, Section .0531 (15A NCAC 2D.0531) of the North Carolina SIP that was effective on June 1, 1981, and approved by EPA as part of the North Carolina SIP on July 26, 1982, at 47 Fed. Reg. 32118, as amended on June 18, 1990, at 55 Fed. Reg. 23735, and on August 1, 1997 (62 Fed. Reg. 41277).

27. The SIP of North Carolina requires that no construction, modification or operation of any facility which may result in air pollution shall occur without first obtaining a permit under North Carolina Administrative Code at Title 15A, Chapter 2, Subchapter 2Q, Section .0300 et seq. (15A NCAC 2Q.0300 et seq.). This rule was approved as part of the North Carolina SIP on May 31, 1972 at 37 Fed. Reg. 10892 , and amended on February 1, 1996, at 61 Fed. Reg. 3584.

South Carolina

28. Pursuant to Part C of the Clean Air Act, the SIP of South Carolina requires that no construction or operation of a major modification to a major stationary source occur in an area designated as attainment without first obtaining a permit under 40 C.F.R. § 52.21(i), and South Carolina Regulation 62.5, Standard No. 7, which is part of the South Carolina SIP that was approved by EPA on February 10, 1982, at 40 Fed. Reg. 6017, and amended on October 3, 1989 (54 Fed. Reg. 40662) and most recently amended on August 20, 1997 (62 Fed. Reg. 44219).

29. The South Carolina SIP, DHEC Reg. 62.5 No. 7, § III.A requires a construction permit for all major modifications. The South Carolina SIP, DHEC Reg. 62.5 No. 7, § IV.A, requires a major plant or major modification to apply the best available control technology to each pollutant subject to regulation under the Act that the major plant emits in significant amounts.

30. The SIP of South Carolina requires that no construction, modification or operation of any facility which may result in air pollution shall occur without first obtaining a permit under South Carolina Regulation 62.1, Section II, which is part of the South Carolina SIP that was approved by EPA on May 31, 1972, at 37 Fed. Reg. 10892, and amended on February 4, 1992, at 57 Fed. Reg. 4158.

FIRST CLAIM FOR RELIEF

(PSD Violations at CG Allen Steam Plant, Unit No. 5, 2000 Project)

31. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

32. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at the CG Allen Plant. These modifications in 2000 consisted of a major boiler and turbine overhaul for Unit No. 5. Defendant constructed additional major modifications to Unit No. 5 at the CG Allen Plant other than those described in this paragraph.

33. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at CG Allen Steam Plant, Unit No. 5, as identified in paragraph 32. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at CG Allen Steam Plant, Unit No. 5.

34. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at the CG Allen Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

35. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SECOND CLAIM FOR RELIEF

(North Carolina SIP General Violations at CG Allen Plant, Unit No. 5, 2000 Project)

36. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

37. Defendant failed to obtain a permit to construct or operate the modifications at the CG Allen Plant identified in paragraph 32 as required by 15A NCAC 2Q.0301.

38. Defendant has violated and continues to violate the Act and the North Carolina SIP at the CG Allen Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

39. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

THIRD CLAIM FOR RELIEF

(PSD Violations at CG Allen Steam Plant, Unit No. 5, 1996 Project)

40. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

41. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at the CG Allen Plant. This project consists of the replacement of the economizer in the superheat and reheat furnaces for Unit No. 5 in 1996. Defendant constructed additional major modifications to Unit No. 5 at the CG Allen Plant other than those described in this paragraph.

42. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at CG Allen Steam Plant, Unit No. 5, as identified in paragraph 41. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at CG Allen Steam Plant, Unit No. 5.

43. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at the CG Allen Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

45. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FOURTH CLAIM FOR RELIEF

(North Carolina SIP General Violations at CG Allen Plant, Unit No. 5, 1996 Project)

46. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

47. Defendant failed to obtain a permit to construct or operate the modifications at the CG Allen Plant identified in paragraph 41 as required by 15A NCAC 2Q.0301.

48. Defendant has violated and continues to violate the Act and the North Carolina SIP at the CG Allen Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

41. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

FIFTH CLAIM FOR RELIEF

(PSD Violations at CG Allen Steam Plant, Unit No. 4, 1996 Project)

50. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

51. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at the CG Allen Plant. This major modification in 1996 consists of the replacement of both banks of the economizer and the superheat header and crossover tubing for Unit No. 4. Defendant constructed additional major modifications to Unit No. 4 at the CG Allen Plant other than those described in this paragraph.

52. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at CG Allen Steam Plant, Unit No. 4, as identified in paragraph 51. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at CG Allen Steam Plant, Unit No. 4.

53. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at the CG Allen Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

54. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SIXTH CLAIM FOR RELIEF

(North Carolina SIP General Violations at CG Allen Plant, Unit No. 4, 1996 Project)

55. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

56. Defendant failed to obtain a permit to construct or operate the modifications at the CG Allen Plant identified in paragraph 51 as required by 15A NCAC 2Q.0301.

57. Defendant has violated and continues to violate the Act and the North Carolina SIP at the CG Allen Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

58. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

SEVENTH CLAIM FOR RELIEF

(PSD Violations at CG Allen Steam Plant, Unit No. 4, 1998 Project)

59. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

60. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at the CG Allen Plant. These modifications in 1998 consisted of a major boiler and turbine overhaul for Unit No. 4. Defendant constructed additional major modifications to Unit No. 4 at the CG Allen Plant other than those described in this paragraph.

61. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at CG Allen Steam Plant, Unit No. 4, as identified in paragraph 60. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D. 0530 of the North Carolina SIP at the CG Allen Steam Plant, Unit No. 4.

62. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at the CG Allen Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

63. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil

penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

EIGHTH CLAIM FOR RELIEF

(North Carolina SIP General Violations at CG Allen Plant, Unit No. 4, 1998 Project)

64. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

65. Defendant failed to obtain a permit to construct or operate the modifications at the CG Allen Plant identified in paragraph 60 as required by 15A NCAC 2Q.0301.

66. Defendant has violated and continues to violate the Act and the North Carolina SIP at the CG Allen Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

67. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

NINTH CLAIM FOR RELIEF

(PSD Violations at CG Allen Steam Plant, Unit No. 2, 1988 Project)

68. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

69. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at the CG Allen Plant, Unit No. 2. These modifications in 1988 included replacement and redesign of major components of the boiler. Defendant constructed

additional major modifications to Unit No. 2 at the CG Allen Plant other than those described in this paragraph.

70. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at CG Allen Steam Plant, Unit No. 2, as identified in paragraph 69. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at CG Allen Steam Plant, Unit No. 2.

71. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at the CG Allen Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

72. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

TENTH CLAIM FOR RELIEF

(North Carolina SIP General Violations at CG Allen Plant, Unit No. 2, 1988 Project)

73. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

74. Defendant failed to obtain a permit to construct or operate the modifications at the CG Allen Plant identified in paragraph 69 as required by 15A NCAC 2Q.0301.

75. Defendant has violated and continues to violate the Act and the North Carolina SIP at the CG Allen Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

76. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

ELEVENTH CLAIM FOR RELIEF

(PSD Violations at CG Allen Steam Plant, Unit No. 1, 1989 Project)

77. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

78. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at the CG Allen Plant, Unit No. 1. These modifications in 1989 included, but are not limited to replacement and redesign of major components of the boiler for Unit No. 1. Defendant constructed additional major modifications to Unit No. 1 at the CG Allen Plant other than those described in this paragraph.

79. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at CG Allen Steam Plant, Unit No. 1, as identified in paragraph 78. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at CG Allen Steam Plant, Unit No. 1.

80. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at the CG Allen Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

81. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

TWELFTH CLAIM FOR RELIEF

(North Carolina SIP General Violations at CG Allen Plant, Unit No. 1, 1989 Project)

82. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

83. Defendant failed to obtain a permit to construct or operate the modifications at the CG Allen Plant identified in paragraph 78 as required by 15A NCAC 2Q.0301.

84. Defendant has violated and continues to violate the Act and the North Carolina SIP at the CG Allen Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

85. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

THIRTEENTH CLAIM FOR RELIEF

(PSD Violations at Belews Creek Plant, Unit No. 2, 1999 Project)

86. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

87. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at the Belews Creek, Unit No. 2. These modifications in 1999 included, but are not limited to the replacement and redesign of both banks of the economizer, and replacement of the horizontal reheater. Defendant constructed additional major modifications to Unit No. 2 at the Belews Creek Plant other than those described in this paragraph.

88. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at Belews Creek Plant, Unit No. 2, as identified in paragraph 87. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at Belews Creek Plant, Unit No. 2.

89. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at the Belews Creek Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

90. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FOURTEENTH CLAIM FOR RELIEF

(North Carolina SIP General Violations at Belews Creek Plant, Unit No. 2, 1999 Project)

91. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

92. Defendant failed to obtain a permit to construct or operate the modifications at the Belews Creek Plant identified in paragraph 87 as required by 15A NCAC 2Q.0301.

93. Defendant has violated and continues to violate the Act and the North Carolina SIP at the Belews Creek Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

94. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

FIFTEENTH CLAIM FOR RELIEF

(PSD Violations at Belews Creek Plant, Unit No. 2, 1996 Project)

95. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

96. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at the Belews Creek Plant, Unit No. 2. These modifications in 1996 included, but are not limited to, the redesign and replacement of the pendant reheater section. Defendant constructed additional major modifications to Unit No. 2 at the Belews Creek Plant other than those described in this paragraph.

97. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at Belews Creek Plant, Unit

No. 2, as identified in paragraph 96. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at Belews Creek Plant, Unit No. 2.

98. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at the Belews Creek Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

99. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SIXTEENTH CLAIM FOR RELIEF

(North Carolina SIP General Violations at Belews Creek Plant, Unit No. 2, 1996 Project)

100. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

101. Defendant failed to obtain a permit to construct or operate the modifications at the Belews Creek Plant identified in paragraph 96 as required by 15A NCAC 2Q.0301.

102. Defendant has violated and continues to violate the Act and the North Carolina SIP at the Belews Creek Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

103. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil

penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

SEVENTEENTH CLAIM FOR RELIEF

(PSD Violations at Belews Creek, Unit No. 1, 2000 Project)

104. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

105. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at the Belews Creek, Unit No. 1. These modifications in 2000 included, but are not limited to: redesigning and replacing both banks of economizers, replacement of the horizontal reheater. Defendant constructed additional major modifications to Belews Creek Plant, Unit No. 1 other than those described in this paragraph.

106. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at Belews Creek Plant, Unit No. 1, as identified in paragraph 105. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at Belews Creek Plant, Unit No. 1.

107. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at the Belews Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

108. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day

for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

EIGHTEENTH CLAIM FOR RELIEF

(North Carolina SIP General Violations at Belews Creek Plant, Unit No. 1, 2000 Project)

109. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

110. Defendant failed to obtain a permit to construct or operate the modifications at the Belews Creek Plant identified in paragraph 105 as required by 15A NCAC 2Q.0301.

111 Defendant has violated and continues to violate the Act and the North Carolina SIP at the Belews Creek Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

112. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

NINETEENTH CLAIM FOR RELIEF

(PSD Violations at Buck Plant, Unit No. 5, 1991 Project)

113. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

114. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at the Buck Plant, Unit No. 5. These modifications, completed in 1991 included redesign and replacement of the pendant heater section, and resulted in the

refurbishment of the unit. Defendant constructed additional major modifications to Unit No. 5 at the Buck Plant other than those described in this paragraph.

115. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at Buck Plant, Unit No. 5, as identified in paragraph 114. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at Buck Plant, Unit No. 5.

116. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at the Buck Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

117. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

TWENTIETH CLAIM FOR RELIEF

(North Carolina SIP General Violations at Buck Plant, Unit No. 5, 1991 Project)

118. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

119. Defendant failed to obtain a permit to construct or operate the modifications at the Buck Plant identified in paragraph 114 as required by 15A NCAC 2Q.0301.

120. Defendant has violated and continues to violate the Act and the North Carolina SIP at the Buck Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

121. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

TWENTY-FIRST CLAIM FOR RELIEF

(PSD Violations at Buck Plant, Unit No. 4, 1994 Project)

122. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

123. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at the Buck Plant, Unit No. 4. These modifications completed in 1994 resulted in the refurbishment of Unit. Defendant constructed additional major modifications to Unit No. 4 at the Buck Plant other than those described in this paragraph.

124. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at the Buck Plant, Unit No. 4, as identified in paragraph 123. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at Buck Plant, Unit No. 4.

125. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at Buck Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

126. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

TWENTY-SECOND CLAIM FOR RELIEF

(North Carolina SIP General Violations at Buck Plant, Unit No. 4, 1994 Project)

127. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

128. Defendant failed to obtain a permit to construct or operate the modifications at the Buck Plant identified in paragraph 123 as required by 15A NCAC 2Q.0301.

129. Defendant has violated and continues to violate the Act and the North Carolina SIP at the Buck Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

130. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

TWENTY-THIRD CLAIM FOR RELIEF

(PSD Violations at Buck Plant, Unit No. 3, 1994 Project)

131. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

132. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at the Buck Plant, Unit No. 3. These modifications completed in 1994 served to overhaul Unit No. 3, including but not limited to replacement of tubing, and replacement of the backpass with redesigned components. Defendant constructed additional major modifications to Unit No. 3 at the Buck Plant other than those described in this paragraph.

133. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at Buck Plant, Unit No. 3, as identified in paragraph 132. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at Buck Plant, Unit No. 3.

134. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at Buck Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

135. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

TWENTY-FOURTH CLAIM FOR RELIEF

(North Carolina SIP General Violations at Buck Plant, Unit No. 3, 1994 Project)

136. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

137. Defendant failed to obtain a permit to construct or operate the modifications at the Buck Plant identified in paragraph 132 as required by 15A NCAC 2Q.0301.

138. Defendant has violated and continues to violate the Act and the North Carolina SIP at the Buck Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

139. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

TWENTY-FIFTH CLAIM FOR RELIEF

(PSD Violations at Marshall Plant, Unit No. 4, 1990 Project)

140. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

141. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at the Marshall Plant, Unit No. 4. These modifications in 1990 included, but are not limited to, the replacement of horizontal reheater and other boiler components. Defendant constructed additional major modifications to Unit No. 4 at the Marshall Plant other than those described in this paragraph.

142. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at Marshall Plant, Unit

No. 4 as identified in paragraph 141. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at Marshall Plant, Unit No. 4.

143. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at Marshall Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

144. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

TWENTY-SIXTH CLAIM FOR RELIEF

(North Carolina SIP General Violations at Marshall Plant, Unit No. 4, 1990 Project)

145. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

146. Defendant failed to obtain a permit to construct or operate the modifications at the Marshall Plant identified in paragraph 141 as required by 15A NCAC 2Q.0301.

147. Defendant has violated and continues to violate the Act and the North Carolina SIP at the Marshall Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

148. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil

penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

TWENTY-SEVENTH CLAIM FOR RELIEF

(PSD Violations at Marshall Plant, Unit No. 3, 1999 Project)

149. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

150. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, Marshall Plant, Unit No. 3. These modifications in 1999 resulted in the refurbishment of Unit No. 3, including but not limited to replacement of reheater assemblies, the ignition system, superheat outlet expansion loops, and superheat platen outlet expansion loops. Defendant constructed additional major modifications to Unit No. 3 at the Marshall Plant other than those described in this paragraph.

151. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at Marshall Plant, Unit No. 3 as identified in paragraph 150. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at Marshall Plant, Unit No. 3.

152. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at Marshall Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

153. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil

penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

TWENTY-EIGHTH CLAIM FOR RELIEF

(North Carolina SIP General Violations at Marshall Plant, Unit No. 3, 1999 Project)

154. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

155. Defendant failed to obtain a permit to construct or operate the modifications at the Marshall Plant identified in paragraph 150 as required by 15A NCAC 2Q.0301.

156. Defendant has violated and continues to violate the Act and the North Carolina SIP at the Marshall Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

157. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

TWENTY-NINTH CLAIM FOR RELIEF

(PSD Violations at Marshall Plant, Unit No. 2, 1989 Project)

158. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

159. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, Marshall Plant, Unit No. 2. These modifications in 1989 included, but are not limited to: replacement of the waterwall, replacement of the lower economizer and

other boiler work. Defendant constructed additional major modifications to Marshall Plant, Unit No. 2 other than those described in this paragraph.

160. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at Marshall Plant, Unit No. 2 as identified in paragraph 159. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at Marshall Plant, Unit No. 2.

161. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at Marshall Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

162. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

THIRTIETH CLAIM FOR RELIEF

(North Carolina SIP General Violations at Marshall Plant, Unit No. 2, 1989 Project)

163. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

164. Defendant failed to obtain a permit to construct or operate the modifications at the Marshall Plant identified in paragraph 159 as required by 15A NCAC 2Q.0301.

165. Defendant has violated and continues to violate the Act and the North Carolina SIP at the Marshall Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

166. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

THIRTY-FIRST CLAIM FOR RELIEF

(PSD Violations at Marshall Plant, Unit No. 2, 1996 Project)

167. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

168. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at Marshall Plant, Unit No. 2. These modifications in 1996 included, but are not limited to replacement of primary superheater convection pass front wall and other work at Unit No. 2. Defendant constructed additional major modifications to Marshall Plant, Unit No. 2 other than those described in this paragraph.

169. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at Marshall Plant, Unit No. 2 as identified in paragraph 168. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at Marshall Plant, Unit No. 2.

170. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at Marshall Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

171. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

THIRTY-SECOND CLAIM FOR RELIEF

(North Carolina SIP General Violations at Marshall Plant, Unit No. 2, 1996 Project)

172. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

173. Defendant failed to obtain a permit to construct or operate the modifications at the Marshall Plant identified in paragraph 168 as required by 15A NCAC 2Q.0301.

174. Defendant has violated and continues to violate the Act and the North Carolina SIP at the Marshall Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

175. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

THIRTY-THIRD CLAIM FOR RELIEF

(PSD Violations at Cliffside Plant, Unit No. 2, 1993 Project)

176. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

177. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at Cliffside Plant, Unit No. 2. These modifications completed in 1993 resulted in the refurbishment of the unit. Defendant constructed additional major modifications to Unit No. 2 at the Cliffside Plant other than those described in this paragraph.

178. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at Cliffside Plant, Unit No. 2 as identified in paragraph 177. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at Cliffside Plant, Unit No. 2.

179. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at the Cliffside Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

180. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

THIRTY-FOURTH CLAIM FOR RELIEF

(North Carolina SIP General Violations at Cliffside Plant, Unit No. 2, 1993 Project)

181. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

182. Defendant failed to obtain a permit to construct or operate the modifications at the Cliffside Plant identified in paragraph 177 as required by 15A NCAC 2Q.0301.

183. Defendant has violated and continues to violate the Act and the North Carolina SIP at the Cliffside Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

184. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

THIRTY-FIFTH CLAIM FOR RELIEF

(PSD Violations at Cliffside Plant, Unit No. 3, 1990 Project)

185. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

186. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at Cliffside Plant, Unit No. 3. These modifications completed in 1990 resulted in the refurbishment of the unit, including but not limited to replacement of tubes, replacement and redesign of the backpass, and replacement and redesign of the ignition system. Defendant constructed additional major modifications to Unit No. 3 at the Cliffside Plant other than those described in this paragraph.

187. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at Cliffside Plant, Unit No. 3 as identified in paragraph 186. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at Cliffside Plant, Unit No. 3.

188. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at Cliffside Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

189. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

THIRTY-SIXTH CLAIM FOR RELIEF

(North Carolina SIP General Violations at Cliffside Plant, Unit No. 3, 1990 Project)

190. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

191. Defendant failed to obtain a permit to construct or operate the modifications at the Cliffside Plant identified in paragraph 186 as required by 15A NCAC 2Q.0301.

192. Defendant has violated and continues to violate the Act and the North Carolina SIP at the Cliffside Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

193. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

THIRTY-SEVENTH CLAIM FOR RELIEF

(PSD Violations at Cliffside Plant, Unit No. 4, 1990 Project)

194. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

195. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at Cliffside Plant, Unit No. 4. These modifications completed in 1990 resulted in the refurbishment of the unit, including but not limited to replacement of tubing, replacement of upper economizer banks and pendant superheater assemblies, turbine rehabilitation, and a fuel system upgrade. Defendant constructed additional major modifications to Unit No. 4 at the Cliffside Plant other than those described in this paragraph.

196. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at Cliffside Plant, Unit No. 4 as identified in paragraph 195. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at Cliffside Plant, Unit No. 4.

197. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at Cliffside Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

198. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

THIRTY-EIGHTH CLAIM FOR RELIEF

(North Carolina SIP General Violations at Cliffside Plant, Unit No. 4, 1990 Project)

199. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

200. Defendant failed to obtain a permit to construct or operate the modifications at the Cliffside Plant identified in paragraph 195 as required by 15A NCAC 2Q.0301.

201. Defendant has violated and continues to violate the Act and the North Carolina SIP at the Cliffside Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

202. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

THIRTY-NINTH CLAIM FOR RELIEF

(PSD Violations at Cliffside Plant, Unit No. 5, 1992/1995 Project)

203. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

204. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at Cliffside Plant, Unit No. 5. These modifications included the redesign and replacement of the Unit No. 5 economizer, and other work, in 1992 and 1995. Defendant constructed additional major modifications to Unit No. 5 at the Cliffside Plant other than those described in this paragraph.

205. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at Cliffside Plant, Unit No. 5 as identified in paragraph 204. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at Cliffside Plant, Unit No. 5.

206. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at Cliffside Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

207. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FORTIETH CLAIM FOR RELIEF

(North Carolina SIP General Violations at Cliffside Plant, Unit No. 5, 1992/1995 Project)

208. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

209. Defendant failed to obtain a permit to construct or operate the modifications at the Cliffside Plant identified in paragraph 204 as required by 15A NCAC 2Q.0301.

210. Defendant has violated and continues to violate the Act and the North Carolina SIP at the Cliffside Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

211. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

FORTY-FIRST CLAIM FOR RELIEF

(PSD Violations at Cliffside Plant, Unit No. 1, 1993 Project)

212. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

213. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at Cliffside Plant, Unit No. 1. These modifications were completed in 1993 and resulted in the refurbishment of the unit, including but not limited to replacement of economizer banks, replacement of the burner panels, and replacement of pendant reheater tubes. Defendant constructed additional major modifications to Unit No. 1 at the Cliffside Plant other than those described in this paragraph.

214. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at Cliffside Plant, Unit No. 1 as identified in paragraph 213. Defendant has not installed and operated BACT for control of

NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at Cliffside Plant, Unit No. 1.

215. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at Cliffside Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

216. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FORTY-SECOND CLAIM FOR RELIEF

(North Carolina SIP General Violations at Cliffside Plant, Unit No. 1, 1993 Project)

217. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

218. Defendant failed to obtain a permit to construct or operate the modifications at the Cliffside Plant identified in paragraph 213 as required by 15A NCAC 2Q.0301.

219. Defendant has violated and continues to violate the Act and the North Carolina SIP at the Cliffside Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

220. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil

penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

FORTY-THIRD CLAIM FOR RELIEF

(PSD Violations at Dan River Plant, Unit No. 3, 1988 Project)

221. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

222. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at Dan River Plant, Unit No. 3. These modifications were completed in 1988 and resulted in the refurbishment of the unit, including but not limited to replacement and redesign of tubing, replacement and redesign of the backpass, and replacement of the boiler ignition system. Defendant constructed additional major modifications to Unit No. 3 at the Dan River Plant other than those described in this paragraph.

223. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at Dan River Plant, Unit No. 3 as identified in paragraph 222. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at Dan River Plant, Unit No. 3.

224. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at Dan River Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

225. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil

penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FORTY-FOURTH CLAIM FOR RELIEF

(North Carolina SIP General Violations at Dan River Plant, Unit No. 3)

226. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

227. Defendant failed to obtain a permit to construct or operate the modifications at the Dan River Plant identified in paragraph 222 as required by 15A NCAC 2Q.0301.

228. Defendant has violated and continues to violate the Act and the North Carolina SIP at the Dan River Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

229. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

FORTY-FIFTH CLAIM FOR RELIEF

(PSD Violations at CG Allen Plant, Unit No. 3, 1994 Project)

230. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

231. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at CG Allen Plant, Unit No. 3. These modifications in 1994 included, but are not limited to: replacement of pendant superheater assemblies, replacement of cross-

over tubes with two steam lines, and installation of a redesigned superheat header. Defendant constructed additional major modifications to Unit No. 3 at the CG Allen Plant other than those described in this paragraph.

232. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at CG Allen Plant, Unit No. 3 as identified in paragraph 231. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at CG Allen Plant, Unit No. 3.

233. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at the CG Allen Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

234. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FORTY-SIXTH CLAIM FOR RELIEF

(North Carolina SIP General Violations at CG Allen Plant, Unit No. 3, 1994 Project)

235. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

236. Defendant failed to obtain a permit to construct or operate the modifications at the CG Allen Plant identified in paragraph 231 as required by 15A NCAC 2Q.0301.

237. Defendant has violated and continues to violate the Act and the North Carolina SIP at the CG Allen Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

238. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

FORTY-SEVENTH CLAIM FOR RELIEF

(PSD Violations at W.S. Lee, Unit No. 3, 1989-90 Project)

239. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

240. At various times, Defendant commenced construction of major modifications, as defined in the Act and the South Carolina SIP, at W.S. Lee, Unit No. 3. These modifications were completed in 1990 and resulted in the refurbishment of the unit, including but not limited to removal and redesign of the platen superheater, replacement of waterwall tubes, replacement of reheat elements, superheat cross over tubes, and of the economizer. Defendant constructed additional major modifications to Unit No. 3 at the W.S. Lee Plant other than those described in this paragraph.

241. Defendant did not obtain a PSD permit as required by DHEC Reg. 62.5 No. 7, § III of the South Carolina SIP prior to constructing or operating the major modifications at W.S. Lee, Unit No. 3 as identified in paragraph 240. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by DHEC Reg. 62.5 No. 7, § IV of the South Carolina SIP at W.S. Lee, Unit No. 3.

242. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule DHEC Reg. 62.5 No. 7, §III of the South Carolina SIP at W.S. Lee Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

243. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FORTY-EIGHTH CLAIM FOR RELIEF

(South Carolina SIP General Violations at W.S. Lee Plant, Unit No. 3, 1989-90 Project)

244. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

245. Defendant failed to obtain a permit to construct or operate the modifications at the W.S. Lee Plant identified in paragraph 240 as required by South Carolina Regulation 62.1, Section II.

246. Defendant has violated and continue to violate the Act and the South Carolina SIP at the W.S. Lee Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the South Carolina SIP will continue.

247. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

FORTY-NINTH CLAIM FOR RELIEF

(PSD Violations at Riverbend Plant, Unit No. 4, 1990 Project)

248. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

249. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at Riverbend Plant, Unit No. 4. These modifications were completed in 1990 and resulted in the refurbishment of the unit, including but not limited to replacement or refurbishment of the steam drum, economizer, waterwalls, superheater, and reheater. Defendant constructed additional major modifications to Unit No. 4 at the Riverbend Plant other than those described in this paragraph.

250. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at Riverbend Plant, Unit No. 4 as identified in paragraph 249. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at Riverbend Plant, Unit No. 4.

251. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at the Riverbend Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

252. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FIFTIETH CLAIM FOR RELIEF

(North Carolina SIP General Violations at Riverbend Plant, Unit No. 4, 1990 Project)

253. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

254. Defendant failed to obtain a permit to construct or operate the modifications at the Riverbend Plant identified in paragraph 249 as required by 15A NCAC 2Q.0301.

255. Defendant has violated and continue to violate the Act and the North Carolina SIP at the Riverbend Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

256. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

FIFTY-FIRST CLAIM FOR RELIEF

(PSD Violations at Riverbend Plant, Unit No. 6, 1991 Project)

257. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

258. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at Riverbend Plant, Unit No. 6. These modifications were completed in 1991 and resulted in the refurbishment of the unit, including but not limited to replacement or redesign of the economizer, waterwall, superheater, and reheater. Defendant constructed additional major modifications to Unit No. 6 at the Riverbend Plant other than those described in this paragraph.

259. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at Riverbend Plant, Unit No. 6 as identified in paragraph 258. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at Riverbend Plant, Unit No. 6.

260. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at the Riverbend Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

261. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FIFTY-SECOND CLAIM FOR RELIEF

(North Carolina SIP General Violations at Riverbend Plant, Unit No. 6, 1991 Project)

262. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

263. Defendant failed to obtain a permit to construct or operate the modifications at the Riverbend Plant identified in paragraph 258 as required by 15A NCAC 2Q.0301.

264. Defendant has violated and continues to violate the Act and the North Carolina SIP at the Riverbend Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

265. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

FIFTY-THIRD CLAIM FOR RELIEF

(PSD Violations at Riverbend Plant, Unit No. 7, 1992 Project)

266. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

267. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at Riverbend Plant, Unit No. 7. These modifications were completed in 1992 and resulted in the refurbishment of the unit, including but not limited to replacement or redesign of the economizer, waterwall, superheater, and reheater. Defendant constructed additional major modifications to Unit No. 7 at the Riverbend Plant other than those described in this paragraph.

268. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at Riverbend Plant, Unit No. 7 as identified in paragraph 267. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at Riverbend Plant, Unit No. 7.

269. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at the Riverbend Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

270. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FIFTY-FOURTH CLAIM FOR RELIEF

(North Carolina SIP General Violations at Riverbend Plant, Unit No. 7, 1992 Project)

271. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

272. Defendant failed to obtain a permit to construct or operate the modifications at the Riverbend Plant identified in paragraph 267 as required by 15A NCAC 2Q.0301.

273. Defendant has violated and continues to violate the Act and the North Carolina SIP at the Riverbend Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

274. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

FIFTY-FIFTH CLAIM FOR RELIEF

(PSD Violations at Buck Plant, Unit 6, 1990 Project)

275. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

276. At various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at Buck Plant, Unit No. 6. These modifications were completed in 1990 and resulted in the rehabilitation of the unit, including but not limited to replacement of the reheater pendants, superheat and reheat crossover tubes, replacement of crossover supports, and waterwall tubes. Defendant constructed additional major modifications to Unit No. 6 at the Buck Plant other than those described in this paragraph.

277. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at Buck Plant, Unit No. 6 as identified in paragraph 276. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at Buck Plant, Unit No. 6.

278. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at the Buck Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

279. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FIFTY-SIXTH CLAIM FOR RELIEF

(North Carolina SIP General Violations at Buck Plant, Unit No. 6, 1990 Project)

280. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

281. Defendant failed to obtain a permit to construct or operate the modifications at the Buck Plant identified in paragraph 276 as required by 15A NCAC 2Q.0301.

282. Defendant has violated and continues to violate the Act and the North Carolina SIP at the Buck Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

283. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

FIFTY-SEVENTH CLAIM FOR RELIEF

(PSD Violations at Marshall Plant, Unit No. 1, 1992 Project)

284. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

285. at various times, Defendant commenced construction of major modifications, as defined in the Act and the North Carolina SIP, at Marshall Plant, Unit No. 1. These modifications in 1992 included, but are not limited to: replacement of all superheater front steam cooled wall tubes, replacement of the lower economizer bank, replacement of significant portions of the waterwall, and replacement of the oil ignition system. Defendant constructed additional major modifications to Unit No. 1 at the Marshall Plant other than those described in this paragraph.

286. Defendant did not obtain a PSD permit as required by 15A NCAC 2D.0530 of the North Carolina SIP prior to constructing or operating the major modifications at Marshall Plant, Unit No. 1 as identified in paragraph 285. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 2D.0530 of the North Carolina SIP at Marshall Plant, Unit No. 1.

287. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 2D.0530 of the North Carolina SIP at the Marshall Plant. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

288. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FIFTY-EIGHTH CLAIM FOR RELIEF

(North Carolina SIP General Violations at Marshall Plant, Unit No. 1, 1992 Project)

289. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

290. Defendant failed to obtain a permit to construct or operate the modifications at the Marshall Plant identified in paragraph 285 as required by 15A NCAC 2Q.0301.

291. Defendant has violated and continues to violate the Act and the North Carolina SIP at the Marshall Plant. Unless restrained by an order of this Court, these and similar violations of the Act and the North Carolina SIP will continue.

292. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413 (b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation.

PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations contained in paragraphs 1 through 292 above, the United States of America requests that this Court:

1. Permanently enjoin the Defendant from operating the coal fired plants set out in Paragraph 23 of this Complaint, including the construction of future modifications, except in accordance with the Clean Air Act and any applicable regulatory requirements;
2. Order Defendant to remedy its past violations by, among other things, requiring Defendant to install, as appropriate, the best available control technology at its plants, for each pollutant subject to regulation under the Clean Air Act;
3. Order Defendant to apply for a permit that is in conformity with the requirements of the PSD program;
4. Order Defendant to conduct audits of its operations to determine if any additional modifications have occurred which would require it to meet the requirements of PSD and NSPS and report the results of these audits to the United States;
5. Order defendant to take other appropriate actions to remedy, mitigate, and offset the harm to public health and the environment caused by the violations of the Clean Air Act alleged above;

6. Assess a civil penalty against Defendant of up to \$25,000 per day for each violation of the Clean Air Act and applicable regulations which occurred or before January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997;

7. Award Plaintiff its costs of this action; and,

8. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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Dated: _____

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